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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,902	12/27/2000	John C. Gaddy	TIMB-003	2760

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RIMAS LUKAS
2707 18TH STREET
SAN FRANCISCO, CA 94110

EXAMINER	
SELLERS, DANIEL R	
ART UNIT	**PAPER NUMBER**
2615	

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/750,902	GADDY ET AL.	
	Examiner	Art Unit	
	Daniel R. Sellers	2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 April 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-69* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-69* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *27 December 2000* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. **Claims 1-20, 30-61, and 63-67** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrickson, USPN 5,365,579 in view of Neumann et al., USPN 6,175,872 B1 (hereinafter Neumann).

3. Regarding **claim 1**, Hendrickson teaches a networked system for synchronizing an audio capture program with a streamed audio file. Hendrickson teaches wherein it receives a selection request that detects various state changes (Col. 6, line 64 – Col. 7, line 10 and Col. 9, line 65 – Col. 10, line 4), and teaches streaming the audio and a synchronization system (Col. 3, lines 31-57). The synchronization system has a calculated time interval within the synchronization system (Col. 9, lines 51-64). It is inherent that the synchronization system is a combination of hardware and software, but Hendrickson does not teach the first and second state change associated with a synchronization program on a client.

Neumann teaches a synchronization program for synchronizing MIDI data between remotely located musicians (Col. 3, lines 19-55). The program detects a first state change and prepares an audio capture program on said client device (Col. 4, lines 44-63). A second state change indicates the start of playback, i.e. reception, processing, or transmission of MIDI packets (Col. 4, lines 63-65). The synchronization program initiates audio capture at a fixed time interval calculated from when a second

state change is detected (Col. 5, lines 24-26 and 43-48). Neumann teaches audio capture hardware coupled to the program at the client device (Col. 6, lines 35-49). It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Hendrickson and Neumann to real-time or near real-time collaboration between musicians possible.

4. Regarding **claim 2**, the further limitation of claim 1, see the preceding argument with respect to claim 1. The combination teaches a storage medium disposed in client device.

5. Regarding **claim 3**, the further limitation of claim 1, see the preceding argument with respect to claim 1. The combination teaches the use of a compressed data stream, or a MIDI stream, and the recording of the stream on a client device.

6. Regarding **claim 4**, the further limitation of claim 1, see the preceding argument with respect to claim 1. The combination teaches local and remote mixing and editing of a single project, wherein it is inherent that control of the audio capture program has the ability to be stopped.

7. Regarding **claim 5**, the further limitation of claim 4, see the preceding argument with respect to claim 4. The combination inherently teaches the ability to stop audio capture, wherein a state change of a program, or a physical entity, is sensed.

8. Regarding **claim 6**, the further limitation of claim 1, see the preceding argument with respect to claim 1. Hendrickson teaches the transmission of the project from any client to any other client, which includes the originating server, or studio (Col. 7, lines 28-31).

9. Regarding **claim 7**, the further limitation of claim 6, see the preceding argument with respect to claim 3. The combination teaches compression.

10. Regarding **claim 8**, the further limitation of claim 1, Neumann teaches the use of the Internet (Col. 4, lines 17-19).

11. Regarding **claim 9**, the further limitation of claim 4, see the preceding argument with respect to claim 4. The combination inherently teaches the stopping of the audio capture, wherein it is a selection based on a user's interaction with the system. One skilled in the art should recognize that a number of selections are made in an editing and recording system, including but not limited to setting recording volumes, balances, and equalization parameters.

12. Regarding **claim 10**, see the preceding argument with respect to claim 1. The combination of Hendrickson and Neumann teaches a method with these features. The combination receives requests from clients, transmits an audio file for local manipulation, and a program, which detects state changes that allow the addition of new material to the audio recording.

13. Regarding **claim 11**, the further limitation of claim 10, see the preceding argument with respect to claim 5. The combination teaches a program, which can detect several different state changes.

14. Regarding **claim 12**, the further limitation of claim 11, see the preceding argument with respect to claim 5. The combination inherently allows the stopping of an audio capture program.

15. Regarding **claim 13**, the further limitation of claim 11, it is inherent that a number of state changes can be detected by an audio playback program. It is inherent that a playback program has a start, stop, and seek ability. Furthermore, the program is inherently able to detect state changes in the means providing the start, stop, and seek ability.

16. Regarding **claim 14**, the further limitation of claim 11, see the preceding argument with respect to claims 9 and 13. It is inherent that many selections are made by the user of the system, and the combination has these features.

17. Regarding **claim 15**, the further limitation of claim 10, the combination teaches an audio stream player.

18. Regarding **claim 16**, the further limitation of claim 10, see the preceding argument with respect to claim 8. The combination teaches the use of the Internet.

19. Regarding **claim 17**, the further limitation of claim 10, see the preceding argument with respect to claim 2. The combination teaches the use of local storage.

20. Regarding **claim 18**, the further limitation of claim 17, see the preceding argument with respect to claim 6. The combination teaches the transmission of the performance from any client to any client, including the originating server.

21. Regarding **claim 19**, the further limitation of claim 18, see the preceding argument with respect to claim 3. The combination teaches the use of compression prior to transmission.

22. Regarding **claim 20**, the further limitation of claim 10, see the preceding argument with respect to claim 6. The combination teaches that the user's performance

is recorded on the server, wherein Neumann teaches that the MIDI packets are recorded locally and sent remotely from each user (Col. 3, lines 36-55, Col. 4, lines 63-65, and Col. 6, lines 35-49).

23. Regarding **claim 30**, see the preceding argument with respect to claim 10. The combination teaches an apparatus with the features of receiving a selection, transmitting a file, and a program with the ability to detect state changes corresponding to recording a performance.

24. Regarding **claim 31**, the further limitation of claim 30, see the preceding argument with respect to claim 11. The combination teaches the apparatus with the feature of detecting a third state change.

25. Regarding **claim 32**, the further limitation of claim 31, see the preceding argument with respect to claim 12. The combination teaches the apparatus with the feature of stopping the audio capture in response to the third change.

26. Regarding **claim 33**, the further limitation of claim 31, see the preceding argument with respect to claim 13. The combination teaches the apparatus with the feature of transmitting the third state change.

27. Regarding **claim 34**, the further limitation of claim 31, see the preceding argument with respect to claim 14. The combination teaches the transmission of the third change in response to a user selection.

28. Regarding **claim 35**, the further limitation of claim 30, see the preceding argument with respect to claim 15. The combination teaches an audio stream player.

29. Regarding **claim 36**, the further limitation of claim 30, see the preceding argument with respect to claim 16. The combination teaches the use of the Internet in the apparatus.

30. Regarding **claim 37**, the further limitation of claim 30, see the preceding argument with respect to claim 17. The combination teaches that the performance is recorded on the client.

31. Regarding **claim 38**, the further limitation of claim 37, see the preceding argument with respect to claim 18. The combination teaches that the performance is transmitted to the server.

32. Regarding **claim 39**, the further limitation of claim 38, see the preceding argument with respect to claim 19. The combination teaches that the performance is compressed prior to transmission.

33. Regarding **claim 40**, the further limitation of claim 30, see the preceding argument with respect to claim 20. The combination teaches that the performance is recorded on the server.

34. Regarding **claim 41**, see the preceding argument with respect to claim 1. The combination of Hendrickson and Neumann teaches the method, which can inherently reside in a computer readable medium.

35. Regarding **claim 42**, the further limitation of claim 41, see the preceding argument with respect to claim 2. The combination teaches the recording on a storage medium on a client.

36. Regarding **claim 43**, the further limitation of claim 41, see the preceding argument with respect to claim 3. The combination teaches the compression of data, the streaming of data, and the recording of data on a storage medium on a server.

37. Regarding **claim 44**, the further limitation of claim 41, see the preceding argument with respect to claim 4. The combination teaches the stopping of audio capture.

38. Regarding **claim 45**, the further limitation of claim 44, see the preceding argument with respect to claim 5. The combination teaches the detection of a state change corresponding to a stopping of audio capture.

39. Regarding **claim 46**, the further limitation of claim 41, see the preceding argument with respect to claim 6. The combination teaches the uploading of data to a server.

40. Regarding **claim 47**, the further limitation of claim 46, see the preceding argument with respect to claim 7. The combination teaches the compression prior to transmission.

41. Regarding **claim 48**, the further limitation of claim 41, see the preceding argument with respect to claim 8. The combination teaches the use of the Internet.

42. Regarding **claim 49**, the further limitation of claim 44, see the preceding argument with respect to claim 9. The combination teaches the detection of a state change corresponding to a user selection, which stops the audio capture.

43. Regarding **claims 50-60**, the combination teaches a method, and it is inherent that the method is performed by a computational device, and the method is stored on a device that is readable by the computational device.

44. Regarding **claim 50**, see the preceding argument with respect to claim 10. The combination teaches a method with the features of receiving a selection, transmitting a file, and transmitting a program with the ability to detect state changes corresponding to recording a performance.

45. Regarding **claim 51**, the further limitation of claim 50, see the preceding argument with respect to claim 11. The combination teaches the method with the feature of detecting a third state change.

46. Regarding **claim 52**, the further limitation of claim 51, see the preceding argument with respect to claim 12. The combination teaches the method with the feature of stopping the audio capture in response to the third change.

47. Regarding **claim 53**, the further limitation of claim 51, see the preceding argument with respect to claim 13. The combination teaches the method with the feature of transmitting the third state change.

48. Regarding **claim 54**, the further limitation of claim 51, see the preceding argument with respect to claim 14. The combination teaches the transmission of the third change in response to a user selection.

49. Regarding **claim 55**, the further limitation of claim 50, see the preceding argument with respect to claim 15. The combination teaches an audio stream player.

50. Regarding **claim 56**, the further limitation of claim 50, see the preceding argument with respect to claim 16. The combination teaches the use of the Internet in the method.

51. Regarding **claim 57**, the further limitation of claim 50, see the preceding argument with respect to claim 17. The combination teaches that the performance is recorded on the client.

52. Regarding **claim 58**, the further limitation of claim 57, see the preceding argument with respect to claim 18. The combination teaches that the performance is transmitted to the server.

53. Regarding **claim 59**, the further limitation of claim 58, see the preceding argument with respect to claim 19. The combination teaches that the performance is compressed prior to transmission.

54. Regarding **claim 60**, the further limitation of claim 50, see the preceding argument with respect to claim 20. The combination teaches that the performance is recorded on the server.

55. Regarding **claim 61**, the further limitation of claim 10, see the preceding argument with respect to claim 1. Hendrickson teaches a step of transmitting an audio file to the client device, such as a soundtrack.

56. Regarding **claim 63**, the further limitation of claim 30, see the preceding argument with respect to claim 61. The combination teaches these features.

57. Regarding **claim 64**, the further limitation of claim 30, see the preceding argument with respect to claim 62. The combination teaches these features.

58. Regarding **claim 65**, the further limitation of claim 50, see the preceding argument with respect to claim 61. The combination teaches these features.

59. Regarding **claim 66**, the further limitation of claim 50, see the preceding argument with respect to claim 62. The combination teaches these features.

60. Regarding **claim 67**, the further limitation of claim 50, see the preceding argument with respect to claim 1. Hendrickson teaches that a user can operate a remote location system and can send a file (Col. 3, line 58 – Col. 4, line 6).

61. **Claims 21-29, 62, 68, and 69** is rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrickson in view of Neumann and well-known prior art.

62. Regarding **claim 21**, see the preceding argument with respect to claim 1. The combination of Hendrickson and Neumann teaches the method, and the apparatus with these features. However the combination does not teach a syncronization program that is transmitted to the client.

It is well known, and Official Notice is given, that a piece of software, or a program, can be downloaded from a server by a client device. This is a well-known method for receiving updates, or new versions, of a piece of software. It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Hendrickson, Neumann, and the well-known art for the purpose of keeping a system updated.

63. Regarding **claim 22**, the further limitation of claim 21, see the preceding argument with respect to claim 2. The combination teaches the recording on a storage medium on a client.

64. Regarding **claim 23**, the further limitation of claim 21, see the preceding argument with respect to claim 3. The combination teaches the compression of data, the streaming of data, and the recording of data on a storage medium on a server.

65. Regarding **claim 24**, the further limitation of claim 21, see the preceding argument with respect to claim 4. The combination teaches the stopping of audio capture.

66. Regarding **claim 25**, the further limitation of claim 24, see the preceding argument with respect to claim 5. The combination teaches the detection of a state change corresponding to a stopping of audio capture.

67. Regarding **claim 26**, the further limitation of claim 21, see the preceding argument with respect to claim 6. The combination teaches the uploading of data to a server.

68. Regarding **claim 27**, the further limitation of claim 26, see the preceding argument with respect to claim 7. The combination teaches the compression prior to transmission.

69. Regarding **claim 28**, the further limitation of claim 21, see the preceding argument with respect to claim 8. The combination teaches the use of the Internet.

70. Regarding **claim 29**, the further limitation of claim 24, see the preceding argument with respect to claim 9. The combination teaches the detection of a state change corresponding to a user selection, which stops the audio capture.

71. Regarding **claim 62**, the further limitation of claim 10, see the preceding argument with respect to claim 21. Well-known art teaches that an updated program can be downloaded.

72. Regarding **claim 68**, the further limitation of claim 1, see the preceding argument with respect to claim 21. Well-known art teaches that an updated program can be downloaded.

73. Regarding **claim 69**, the further limitation of claim 41, see the preceding argument with respect to claim 1. Well-known art teaches that an updated program can be downloaded.

Response to Arguments

74. Applicant's arguments with respect to claims 1-69 have been considered but are moot in view of the new ground(s) of rejection.

75. Claims 1-69 are rejected under 35 USC 103(a) as stated in the previous arguments.

76. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., A program which buffers a downloaded musical file and indicates to a musician the start of playback so that the musician can be ready for a cue to start playing) are not

recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

77. Pertinent non-cited prior art teaches the use of metronomes and clicks to indicate to a musician when to start playing (see Conclusion).

Conclusion

78. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Paulson et al., USPN 5,491,751 (Fig. 19, 20, and 24) ; and

Hester, USPN 6,639,138 B1 (Col. 1, line 61 - Col. 2, line 10).

79. Technology Center 2600 has undergone restructuring as of March 19, 2006. Any **further communication** regarding this application should **indicate the new Art Unit 2615** (old art unit 2644).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel R. Sellers whose telephone number is 571-272-7528. The examiner can normally be reached Monday to Friday, 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (571)272-7564. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SINH TRAN
SUPERVISORY PATENT EXAMINER

DRS